



WEB COPY



W.P.No.36340 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.12.2023

CORAM

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE
AND
THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

W.P.No.36340 of 2023
AND
W.M.P.No.36319 of 2023

K.Gopinath

.. Petitioner

Vs.

The Commissioner
Hosur Corporation
National Highway 207
Thillai Nagar
Hosur, Tamil Nadu 635 109

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the order passed by the respondent in Na.Ka.No.1427/2021/F1 dated 01.12.2023 under Section 128(1)(b) of Tamil Nadu Urban Local Bodies Act, 1998 and quash the same.

For Petitioner : Mr.S.Mukund
For Respondent : Mr.T.Balaji
Standing Counsel



WEB COPY



W.P.No.36340 of 2023

ORDER

(Order of the Court was made by ABDUL QUDDHOSE, J.)

This writ petition has been filed challenging the order dated 01.12.2023 passed by the respondent under Section 128(1)(b) of Tamil Nadu Urban Local Bodies Act, 1998 (in short “the Act”), calling upon the petitioner to remove the gate which has been constructed by him, as according to the respondent the same has been encroached by the petitioner.

2. Heard Mr.S.Mukund, learned counsel appearing for the petitioner and Mr.T.Balaji, learned Standing Counsel appearing for the respondent.

3. According to the petitioner, without any prior notice, the impugned order has been passed. Therefore, on the ground of violation of principles of natural justice, the petitioner seeks to quash the impugned order dated 01.12.2023.

4. The learned counsel appearing for the petitioner drew the attention of this Court to the impugned order dated 01.12.2023 and would submit that without any



W.P.No.36340 of 2023

prior notice and without following the procedure as contemplated under the Act, the petitioner has been called upon to remove the gate. He would also submit that the petitioner is in possession of the property including the gate, ever since 1980.

5. On the other hand, the learned Standing Counsel appearing for the respondent, on instructions, would submit that the respondent had attempted to serve notice on the petitioner, but the petitioner was unavailable and only thereafter, the impugned order dated 01.12.2023 came to be passed. Therefore, according to him, the procedure contemplated under the provisions of the Act has been complied with.

6. However, as seen from the impugned order, there is no reference to any prior notice having been issued to the petitioner, as contended by the learned Standing Counsel appearing for the respondent. Even though the learned Standing Counsel would rely upon the notice dated 14.10.2023 filed by the petitioner in the typed set of papers, the said notice also does not contain any acknowledgment from the petitioner. Therefore, it is clear that the impugned order has been passed calling upon the petitioner to remove the overextended walls and to leave the street



W.P.No.36340 of 2023

for public transport, without issuing any prior notice, which would amount to violation of principles of natural justice. Therefore, necessarily the impugned order has to be quashed. However, the impugned order dated 01.12.2023 has to be treated as show cause notice sent to the petitioner by the respondent, to enable the petitioner to send a reply notice within a time frame to be fixed by this Court.

7. For the foregoing reasons, the impugned order dated 01.12.2023 is hereby quashed and the same is treated as show cause notice issued to the petitioner by the respondent and the petitioner is directed to send a reply within a period of two weeks from the date of receipt of a copy of this order. The respondent shall pass final orders on receipt of a reply from the petitioner within a period of two weeks thereafter, after affording an opportunity of hearing to the petitioner as well as the party, who has given the complaint against the petitioner and any other necessary party, whom the respondent deems fit to enquire. If after holding enquiry as per this order, the respondent finds that that petitioner has committed an act of encroachment, the respondent is at liberty to remove the encroachment, without further notice.



W.P.No.36340 of 2023

With the aforesaid directions, this writ petition is disposed of. No costs.

Connected miscellaneous petition is closed.

(A.Q.,J.) (G.A.M.,J.)

28.12.2023

Internet : Yes

Neutral Citation : Yes/No
gya/mkn

To

The Commissioner
Hosur Corporation
National Highway 207
Thillai Nagar
Hosur, Tamil Nadu 635 109



WEB COPY



W.P.No.36340 of 2023

ABDUL QUDDHOSE, J.
AND
G.ARUL MURUGAN, J.

gya

W.P.No.36340 of 2023

28.12.2023